D.B. Civil Special Appeal(W) No.295/2005

State of Rajasthan & Ors.
Vs.
Laxman Singh

Date of Judgment :: 21-07-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr. RPS Choudhary, AAG for State.
Mr. T. Gupta, for the respondent.

This special appeal arises from an order, dated 6.4.2004 in SBCWP No.2791/2002, disposing of the writ petition of the respondent in the same terms as SBCWP No.1067/2002 titled Smt. Arti Surana Vs. State of Rajasthan & Ors.

The respondent who is a school teacher had challenged his transfer from Government Secondary School, Danthal, Bhilwara to Government Higher Secondary School, Kamedia, Nagaur. The order was issued on 7.12.2001. The respondent initially challenged the order by way of appeal in the Rajasthan Civil Services Appellate Tribunal being Appeal No.3302/2001. He withdrew the appeal on 30.7.2002 and thereafter filed the writ petition on 6.8.2002.

The case of the respondent is that he was transferred on the allegation that he remains absent from headquarter and in that view of the matter he was entitled to an opportunity of hearing. It is also the case of the respondent that the Divisional Commissioner who had issued the transfer order was not

competent to do so. In this regard reliance is placed on orders of this Court in the cases of Atma Prakash V. State, SBCWP No.3664/00 decided on 17.10.2000. Smt. Bali Vs. State, SBCWP No.1296/2001 decided on 23.8.2001 and Smt. Arti Surana & Ors. Vs. State, SBCWP No.1067/02 and analogous decided on 25.1.2002.

We have gone through the orders. No doubt a finding came to be recorded about the competence of the Divisional Commissioner to make orders of transfer of posting but no reason has been assigned as to why the Divisional Commissioner does not have the necessary authority to make such orders. From a reading of the impugned order dated 7.12.2001 it is manifest that the order was issued on administrative ground on consideration of the report of the District Collector, Bhilwara. The Collector had reported about absence of the Headmaster and three teachers including the respondent recommending that they be transferred to other districts.

The point for consideration is whether the Court should interfere with orders of transfer on administrative grounds.

Another aspect of the case is that pursuant to the impugned order, respondent joined the Government Higher Secondary School, Kamedia to which he had been transferred. Though he had filed appeal before the Tribunal he withdrew the same and thereafter filed the writ petition after one year of the order of transfer. The learned Single Judge set

aside the transfer order after three years of the order which stood, exhausted by reason of the respondent's suo motu joining on 16.10.2004.

The point for consideration is whether order of transfer having been implemented and thus exhausted itself, the same should have been set aside after three years.

The scope of interference with the orders of transfer and posting under Article 226 of the Constitution is well settled by catena of decisions of the Apex Court. The Court can interfere only when the order is violative of some statutory rule or in the case of malafide. No violation of any statutory rule has been shown nor a case of malafide is made out. As mentioned above, transfer was on the report of District Collector and we do not think it required any enquiry. As a matter of fact, absence from duty is a misconduct which may justify disciplinary action. Instead of disciplinary action, the authority thought it appropriate to simply transfer the respondent to another district. No interference with the order, in our opinion, was called for.

In the result, the order of learned Single Judge is set aside and the appeal is allowed.

[MOHD. RAFIQ],J. [S.N.JHA],CJ.

Praveen